IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 11544 of 2007(Y)

PETITIONER:

K.S.THANKASWAMY,
CHARGEMAN (BLACKSMITH), K.S.R.T.C. CNETRAL WORKS,
PAPPANAMCODE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.ANANDARAJAN.N
SRI.K.K.MANGALANANDAN

RESPONDENTS:

1. **THE KERALA STATE ROAD TRANSPORT CORPORATION REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, FORT P.O., THIRUVANANTHAPURAM-23.**

2. **THE FINANCIAL ADVISOR & CHIEF ACCOUNTS OFFICER, K.S.R.T.C., TRANSPORT BHAVAN, FORT PO, THIRUVANANTHAPURAM-23.**

3. **THE MECHANICAL ENGINEER (WORKS), K.S.R.T.C. CENTRAL WORKS, PAPPANAMCODE, THIRUVANANTHAPURAM DISTRICT.**

4. **THE SECRETARY, KERALA STATE TRANSPORT WORKER'S CO-OPERATIVE SOCIETY LIMITED NO.T 133, THIRUVANANTHAPURAM.**

R4 BY ADV. SRI.N.UNNIKRISHNAN,SC KSTW CO.OP SOCIET

R1 TO R3 SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 11544 OF 2007 Y

Dated this the 25th July, 2007

JUDGMENT

Prayers in the Writ Petition are as follows:

"i) Issue a writ of certiorari quashing Ext.P4 letter of the 4th respondent Society requisitioning the third respondent to recover an amount of Rs.6554/= from the salary of the petitioner.

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 4th respondent Society to properly appropriate and account the amount of Rs.91,877/= realized from the petitioner as per Exts.P1, P2 and P3 in the loan account of the petitioner furnishing the Statement of Accounts and to refund the excess amount realized from the petitioner with 12% interest immediately.

(iii) Issue a writ of mandamus or any other appropriate writ, order or direction directing 1st to 3rd respondents to pay interest on the amount

of Rs.22,800/= recovered from the salary of the petitioner as per Ext.P1 Certificate for the period during which the amount was illegally withheld and used by them and remitted belated to the 4th respondent Society to adjust the liability of the petitioner to the respondent Society immediately."

2. I do not think that prayers 1 and 2 are maintainable in a Writ Petition under Article 226 of the Constitution of India. There is no statutory flavour to Ext.P4. Ext.P4 arises out of a contract entered into between the petitioner and the fourth respondent Society. I do not see how a public duty arises. I do not see how a Writ of Certiorari will lie against a Society in this matter. As far as the second prayer is concerned, I would think that it is only a contractual duty and at best, it could be said that it is a private duty. I do not see how it can be classified as a public duty. The fourth respondent Co-operative Society is not an authority under Article 12. Of course, the petitioner has a remedy, if at all, under Section 69 of the Co-operative Societies Act as against the fourth respondent. As far as the third prayer

is concerned, it is again a writ of mandamus. It is settled law that to maintain a writ of mandamus, there must exist a legal right in favour of the petitioner and a concomitant duty must also exist on the other side. A writ of mandamus will lie to enforce a public duty. It may be true that there is delay in remitting the amount which the KSRTC is obliged to remit under Section 37 of the Act. But, here, the prayer is not to remit in terms of Section 37, but the prayer is to pay interest. I do not see any statutory warrant for such a prayer. In such circumstances, without prejudice to any other remedy the petitioner has in this regard, and leaving it open to the petitioner to pursue his remedy in respect of the prayers, this Writ Petition is closed.

K. M. JOSEPH, JUDGE

kbk.